

# ATTACHMENT B

## MODEL AGREEMENT DATED 23 MARCH 1998

AGREEMENT

BETWEEN

(INSERT COMPANY NAME AND ADDRESS)

AND

THE DEFENSE ADVANCED RESEARCH PROJECTS AGENCY  
3701 NORTH FAIRFAX DRIVE  
ARLINGTON, VA 22203-1714

CONCERNING

(AIRBORNE COMMUNICATIONS NODE PROGRAM)

Agreement No.: MDA972-98-C-XXXX

ARPA Order No.:

Total Amount of the Agreement: \$

Total Estimated Government Funding of the Agreement: \$

Total Incremental Funding Available for Obligation: \$

Effective Date of this Action:

Authority: 10 U.S.C. § 2371 and Section 845 of the 1994 National Defense Authorization Act as amended

Line of Appropriation:

AA

\*\*\*\*\*

This Agreement is entered into between the United States of America, hereinafter called the Government, represented by The Defense Advanced Research Projects Agency (ARPA), and (INSERT COMPANY NAME) pursuant to and under U.S. Federal law.

FOR (INSERT COMPANY NAME)

FOR THE UNITED STATES OF  
AMERICA THE DEFENSE ADVANCED  
RESEARCH PROJECTS AGENCY

(Signature)

(Signature)

(Name, Title)

(Date)

(Name, Title)

(Date)

## TABLE OF CONTENTS

### ARTICLES

### PAGE

ARTICLE I	Scope of the Agreement
ARTICLE II	Term
ARTICLE III	Management of the Project
ARTICLE IV	Agreement Administration
ARTICLE V	Obligation and Payment
ARTICLE VI	Disputes
ARTICLE VII	Patent Rights
ARTICLE VIII	Data Rights
ARTICLE IX	Foreign Access to Technology
ARTICLE X	Government Furnished Property
ARTICLE XI	Civil Rights Act
ARTICLE XII	Execution
ARTICLE XIII	Security
ARTICLE XIV	Options

### ATTACHMENTS

ATTACHMENT 1	Statement of Work
ATTACHMENT 2	Report Requirements
ATTACHMENT 3	Schedule of Payments and Payable Milestones
ATTACHMENT 4	Funding Schedule
ATTACHMENT 5	List of Government and (INSERT COMPANY NAME) Representatives
ATTACHMENT 6	DD254

## **ARTICLE I: SCOPE OF THE AGREEMENT**

This article should summarize your agreement or response to the DARPA solicitation. We want to understand your vision for the Airborne Communications Node and how well it satisfies program objectives. This summarization must briefly describe the scope of the work you are committing to (carrying out the work in Attachment 1 and identifying deliverables and payable milestones) by entering into this agreement. As such, we expect terms such as “contractor”, “parties”, “program”, etc. to be defined in this article.

In addition, we would like this article to discuss the way you will interact with DARPA management. Suggested wording (paragraphs used in other DARPA agreements) for your consideration follows:

“DARPA will have continuous involvement with the contractor. DARPA will obtain access to program results and certain rights in data and patents pursuant to Articles VII and VIII. DARPA and the contractor are bound to each other by a duty of good faith and best effort in achieving the program objectives.”

“This Agreement is an “other transaction” pursuant to 10 U.S.C. 2371 and Section 845 of the 1994 National Defense Authorization Act, as amended. The Parties agree that the principal purpose of this Agreement is to stimulate the contractor to provide best efforts in development even though the acquisition of property or services for the direct benefit or use of the Government is present. The Federal Acquisition Regulation (FAR) and Department of Defense FAR Supplement (DFARS) apply only as specifically referenced herein. This Agreement is not intended to be, nor shall it be construed as, by implication or otherwise, a partnership, a corporation, or other business organization.”

Should “contractor” be a team, alliance partnership or other arrangement, this article must reflect these provisions and specifically document the relationship between DARPA and the “unique” contractor arrangement.

## **ARTICLE II: TERM**

### **A. Term of this Agreement**

The Program commences upon the date of the last signature hereon and continues for (INSERT NUMBER OF MONTHS) ( ) months. If all funds are expended prior to the (INSERT NUMBER OF MONTHS) ( )-month duration, the Parties have no obligation to continue performance and may elect to cease development at that point. Provisions of this Agreement, which, by their express terms or by necessary implication, apply for periods of time other than specified herein, shall be given effect, notwithstanding this Article.

### **B. Termination Provisions**

Subject to a reasonable determination that the program will not produce beneficial results commensurate with the expenditure of resources, either Party may terminate this Agreement by written notice to the other Party, provided that such written notice is preceded by consultation between the Parties. In the event of a termination of the Agreement, it is agreed that disposition of Data developed under this Agreement, shall be in accordance with the provisions set forth in Article VIII, Data Rights. The Government and ABC will negotiate in good faith a reasonable and timely adjustment of all outstanding issues between the Parties as a result of termination. Failure of the Parties to agree to a reasonable adjustment will be resolved pursuant to Article VI, Disputes. The Government has no obligation to reimburse ABC beyond the last completed and paid milestone if ABC decides to terminate.

### **C. Extending the Term**

The Parties may extend by mutual written agreement the term of this Agreement if funding availability and research opportunities reasonably warrant. The Agreements Officer and the ABC Administrator shall formalize any extension through modification of the Agreement.

**ARTICLE III: MANAGEMENT OF THE PROJECT (NOTE: THIS ARTICLE SHOULD BE SUBSTANTIALLY REVISED TO FIT THE ACN PROGRAM/AGREEMENT.)**

A. Management and Program Structure

ABC shall be responsible for the overall technical and program management of the Program, and technical planning and execution shall remain with ABC. The DARPA Program Manager shall provide recommendations to Program developments and technical collaboration and be responsible for the review and verification of the Payable Milestones.

B. Program Management Planning Process

Program planning will consist of an Annual Program Plan with inputs and review from ABC and DARPA management, containing the detailed schedule of research activities and payable milestones. The Annual Program Plan will consolidate quarterly adjustments in the research schedule, including revisions/modification to payable milestones.

1. Initial Program Plan: ABC will follow the initial program plan that is contained in the Statement of Work (Attachment 1), and the Schedule of Payments and Payable Milestones (Attachment 3).

2. Overall Program Plan Annual Review

(a) ABC, with DARPA Program Manager review, will prepare an overall Annual Program Plan in the first quarter of each Agreement year. (For this purpose, each consecutive twelve (12) month period from (and including) the month of execution of this Agreement during which this Agreement shall remain in effect shall be considered an "Agreement Year".) The Annual Program Plan will be presented and reviewed at an annual site review which will be attended by ABC Management, the DARPA Program Manager, Senior DARPA management as appropriate, and other DARPA program managers and personnel as appropriate. ABC, with DARPA participation and review, will prepare a final Annual Program Plan.

(b) The Annual Program Plan provides a detailed schedule of research activities, commits ABC to use its best efforts to meet specific performance objectives, includes forecasted expenditures and describes the Payable Milestones. The Annual Program Plan will consolidate all prior adjustments in the research schedule, including revisions/modifications to payable milestones. Recommendations for changes, revisions or modifications to the Agreement which result from the Annual Review shall be made in accordance with the provisions of Article III, Section C.

C. Modifications

1. As a result of quarterly meetings, annual reviews, or at any time during the term of the Agreement, research progress or results may indicate that a change in the Statement of Work and/or the Payable Milestones, would be beneficial to program objectives. Recommendations for modifications, including justifications to support any changes to the Statement of Work and/or the Payable Milestones, will be documented in a letter and submitted by ABC to the DARPA Program Manager with a copy to the DARPA Agreements Officer. This documentation letter will detail the technical, chronological, and financial impact of the proposed modification to the research program. ABC shall approve any Agreement modification. The Government is not obligated to pay for additional or revised Payable Milestones until

the Payable Milestones Schedule (Attachment 3) is formally revised by the DARPA Agreements Officer and made part of this Agreement.

2. The DARPA Program Manager shall be responsible for the review and verification of any recommendations to revise or otherwise modify the Agreement Statement of Work, Schedule of Payments or Payable Milestones, or other proposed changes to the terms and conditions of this Agreement.

3. For minor or administrative Agreement modifications (e.g. changes in the paying office or appropriation data, changes to Government or ABC personnel identified in the Agreement, etc.) no signature is required by ABC.

**ALTERNATIVE ARTICLE III: MANAGEMENT OF THE PROJECT (NOTE: THIS ARTICLE SHOULD BE SUBSTANTIALLY REVISED TO FIT THE ACN PROGRAM/AGREEMENT.)**

**A. Consortium Members**

Consortium Members, as set forth in the Articles of Collaboration of the Consortium, are:

(LIST CONSORTIUM MEMBERS)

**B. Consortium Management Committee (CMC)**

1. The CMC shall be comprised of one voting representative from each Consortium Member, and in accordance with the Consortium Articles of Collaboration, bind the Consortium Members. The following CMC decisions are subject to DARPA approval:

(a) Changes to the Articles of Collaboration if such changes substantially alter the relationship of the Parties as originally agreed upon when the Agreement was executed;

(b) Changes to, or elimination of, any DARPA funding allocation to any Consortium Member as technically and/or financially justified;

(c) Technical and/or funding revisions to the Agreement; and

(d) Admission of additional or replacement Consortium Members.

2. The CMC, is responsible for establishing a schedule of regular technical meetings, to be held on a quarterly basis. The CMC shall notify all Consortium Members and the DARPA Program Manager of the established meeting schedule and, in the event of changes to this schedule, shall notify all Consortium Members and the DARPA Program Manager thirty (30) calendar days prior to the next scheduled meeting.

3. A quorum is required of the Program Managers (or designees) representing the Consortium Members and the DARPA Program Manager (or designee) at quarterly technical meetings. All technical decisions shall be made by (MAJORITY/CONSENSUS/ETC.) vote of the CMC and the DARPA Program Manager.

**C. Management and Program Structure**

Technical and program management of the coordinated research program established under this Agreement shall be accomplished through the management structures and processes detailed in this Article.

1. The CMC shall be responsible for the overall management of the Consortium including technical, programmatic, reporting, financial and administrative matters.

2. The DARPA Program Manager shall fully participate in all meetings of the CMC. Other Government personnel as deemed appropriate by the DARPA Program Manager may also participate in the technical portion of these meetings.

#### **D. Program Management Planning Process**

The program management and planning process shall be subject to quarterly and annual reviews with inputs and review from the CMC and the DARPA Program Manager.

1. Initial Program Plan: The Consortium will follow the initial program plan that is contained in the Statement of Work (Attachment 1), and the Schedule of Payments and Payable Milestones (Attachment 3).

#### **2. Overall Program Plan Annual Review**

(a) The CMC, with DARPA Program Manager participation and review, will prepare an overall Annual Program Plan in the first quarter of each Agreement year. (For this purpose, each consecutive twelve (12) month period from (and including) the month of execution of this Agreement during which this Agreement shall remain in effect shall be considered an "Agreement Year.") The Annual Program Plan will be presented and reviewed at an annual site review concurrent with the appropriate quarterly meeting of the CMC which will be attended by the Consortium Members, the DARPA Program Manager, Senior DARPA management or other DARPA program managers and personnel as appropriate. The CMC, with DARPA participation and review, will prepare a final Annual Program Plan.

(b) The Annual Program Plan provides a detailed schedule of research activities, commits the Consortium to use its best efforts to meet specific performance objectives, includes forecasted expenditures and describes the Payable Milestones. The Annual Program Plan will consolidate all prior adjustments in the research schedule, including revisions/modifications to payable milestones. Recommendations for changes, revisions or modifications to the Agreement which result from the Annual Review shall be made in accordance with the provisions of Article III, Section E.

#### **E. Modifications**

1. As a result of quarterly meetings, annual reviews, or at any time during the term of the Agreement, research progress or results may indicate that a change in the Statement of Work and/or the Payable Milestones, would be beneficial to program objectives. Recommendations for modifications, including justifications to support any changes to the Statement of Work and/or the Payable Milestones, will be documented in a letter and submitted by the CMC to the DARPA Program Manager with a copy to the DARPA Agreements Officer. This documentation letter will detail the technical, chronological, and financial impact of the proposed modification to the research program. The CMC shall approve any Agreement modification. The Government is not obligated to pay for additional or revised Payable Milestones until the Payable Milestones Schedule (Attachment 3) is formally revised by the DARPA Agreements Officer and made part of this Agreement.

2. The DARPA Program Manager shall be responsible for the review and verification of any recommendations to revise or otherwise modify the Agreement Statement of Work, Schedule of Payments or Payable Milestones, or other proposed changes to the terms and conditions of this Agreement.

3. For minor or administrative Agreement modifications (e.g. changes in the paying office or appropriation data, changes to Government or Consortium personnel identified in the Agreement, etc.) no signature is required by the Consortium.

#### **ARTICLE IV. AGREEMENT ADMINISTRATION**

Unless otherwise provided in this Agreement, approvals permitted or required to be made by DARPA may be made only by the DARPA Agreements Officer. Administrative and contractual matters under this Agreement shall be referred to the following representatives of the parties:

DARPA: (INSERT NAME) (Agreements Officer) (INSERT TELEPHONE NUMBER)

ABC: (INSERT NAME) (ABC Administrator) (INSERT TELEPHONE NUMBER)

Technical matters under this Agreement shall be referred to the following representatives:

DARPA: (INSERT NAME) (Program Manager) (INSERT TELEPHONE NUMBER)

ABC: (INSERT NAME) (INSERT TITLE) (INSERT TELEPHONE NUMBER)

Each party may change its representatives named in this Article by written notification to the other party.

#### **ARTICLE V: OBLIGATION AND PAYMENT**

##### **A. Obligation**

1. The Government's liability to make payments to ABC is limited to only those funds obligated under the Agreement or by modification to the Agreement. DARPA may obligate funds to the Agreement incrementally.

2. If modification becomes necessary in performance of this Agreement, pursuant to Article III, paragraph B, the DARPA Agreements Officer and ABC Administrator shall execute a revised Schedule of Payable Milestones consistent with the then current Program Plan.

##### **B. Payments**

1. ABC has an established and agrees to maintain an established accounting system which complies with Generally Accepted Accounting Principles and the requirements of this Agreement, and shall ensure that appropriate arrangements have been made for receiving, distributing and accounting for Federal funds. An acceptable accounting system is one in which all cash receipts and disbursements are controlled and documented properly.

2. ABC shall document the accomplishments of each Payable Milestone by submitting or otherwise providing the Payable Milestones Report required by Attachment 2, Part D. ABC shall submit an original and one (1) copy of all invoices to the Agreements Officer for payment approval. After written verification of the accomplishment of the Payable Milestone by the DARPA Program Manager, and approval by the Agreements Officer, the invoices will be forwarded to the payment office within fifteen (15) calendar days of receipt of the invoices at DARPA. Payment approval for the final Payable Milestone will be made after reconciliation of DARPA funding with actual ABC contributions. Payments will be made by Defense Accounting Office, DFAS-IN-AKA, Attention: Vendor Pay, 8899 East 56th Street, Indianapolis, IN 46249-1325 within fifteen (15) calendar days of DARPA's transmittal. Subject to change only through written Agreement modification, payment shall be made to the address of the ABC Administrator set forth below.

3. Address of Payee: (INSERT NAME AND ADDRESS OF PAYEE)

4. Limitation of Funds: In no case shall the Government's financial liability exceed the amount obligated under this Agreement.

5. Financial Records and Reports: ABC shall maintain adequate records to account for all funding under this Agreement and shall maintain adequate records to account for ABC funding provided under this Agreement. Upon completion or termination of this Agreement, whichever occurs earlier, the ABC Administrator shall furnish to the Agreements Officer a copy of the Final Report required by Attachment 2, Part E. ABC's relevant financial records are subject to examination or audit on behalf of DARPA by the Government for a period not to exceed three (3) years after expiration of the term of this Agreement. The Agreements Officer or designee shall have direct access to sufficient records and information of ABC, to ensure full accountability for all funding under this Agreement. Such audit, examination, or access shall be performed during business hours on business days upon prior written notice and shall be subject to the security requirements of the audited party.

## **ARTICLE VI: DISPUTES**

### **A. General**

The Parties shall communicate with one another in good faith and in a timely and cooperative manner when raising issues under this Article.

### **B. Dispute Resolution Procedures**

1. Any disagreement, claim or dispute between DARPA and ABC concerning questions of fact or law arising from or in connection with this Agreement, and, whether or not involving an alleged breach of this Agreement, may be raised only under this Article.

2. Whenever disputes, disagreements, or misunderstandings arise, the Parties shall attempt to resolve the issue(s) involved by discussion and mutual agreement as soon as practicable. In no event shall a dispute, disagreement or misunderstanding which arose more than three (3) months prior to the notification made under subparagraph B.3 of this article constitute the basis for relief under this article unless the Director of DARPA in the interests of justice waives this requirement.

3. Failing resolution by mutual agreement, the aggrieved Party shall document the dispute, disagreement, or misunderstanding by notifying the other Party (through the DARPA Agreements Officer or Consortium Administrator, as the case may be) in writing of the relevant facts, identify unresolved issues, and specify the clarification or remedy sought. Within five (5) working days after providing notice to the other Party, the aggrieved Party may, in writing, request a joint decision by the DARPA Deputy Director for Management and senior executive (no lower than (INSERT A LEVEL OF EXECUTIVE FAR ENOUGH REMOVED FROM THE PROGRAM TO MAINTAIN A GREATER LEVEL OF IMPARTIALITY) level) appointed by ABC. The other Party shall submit a written position on the matter(s) in dispute within thirty (30) calendar days after being notified that a decision has been requested. The Deputy Director for Management and the senior executive shall conduct a review of the matter(s) in dispute and render a decision in writing within thirty (30) calendar days of receipt of such written position. Any such joint decision is final and binding.

4. In the absence of a joint decision, upon written request to the Director of DARPA, made within thirty (30) calendar days of the expiration of the time for a decision under subparagraph B.3 above, the dispute shall be further reviewed. The Director of DARPA may elect to conduct this review personally or through a designee or jointly with a senior executive (no lower than (INSERT A LEVEL OF EXECUTIVE FAR ENOUGH REMOVED FROM THE PROGRAM TO MAINTAIN A GREATER LEVEL OF IMPARTIALITY) level) appointed by ABC. Following the review, the Director of DARPA or designee will resolve the issue(s) and notify the Parties in writing. Such resolution is not subject to further administrative review and, to the extent permitted by law, shall be final and binding.



(5. Subject only to this article and 41 U.S.C. § 321-322, if not satisfied with the results of completing the above process, either Party may within thirty (30) calendar days of receipt of the notice in subparagraph B.4 above pursue any right and remedy in a court of competent jurisdiction. NOTE: THIS PARAGRAPH SHOULD NOT BE INCLUDED IN THIS AGREEMENT UNLESS THIS ISSUE IS RAISED BY THE COMPANY)

C. Limitation of Damages

Claims for damages of any nature whatsoever pursued under this Agreement shall be limited to direct damages only up to the aggregate amount of DARPA funding disbursed as of the time the dispute arises. In no event shall DARPA be liable for claims for consequential, punitive, special and incidental damages, claims for lost profits, or other indirect damages.

## **ARTICLE VII: PATENT**

A. Definitions

1. "Invention" means any invention or discovery, which is or may be patentable or otherwise protectable under Title 35 of the United States Code.
2. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
3. "Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is capable of being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.
4. "Subject invention" means any invention conceived or first actually reduced to practice in the performance of work under this Agreement.

B. Allocation of Principal Rights

Unless ABC shall have notified DARPA (in accordance with subparagraph C.2 below) that ABC does not intend to retain title, ABC shall retain the entire right, title, and interest throughout the world to each subject invention consistent with the provisions of this Article and 35 U.S.C. § 202. With respect to any subject invention in which ABC retains title, DARPA shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the subject invention throughout the world.

C. Invention Disclosure, Election of Title, and Filing of Patent Application

1. ABC shall disclose each subject invention to DARPA within four (4) months after the inventor discloses it in writing to his company personnel responsible for patent matters. The disclosure to DARPA shall be in the form of a written report and shall identify the Agreement under which the invention was made and the identity of the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. ABC shall also submit to DARPA an annual listing of subject inventions.

2. If ABC determines that it does not intend to retain title to any such invention, ABC shall notify DARPA, in writing, within eight (8) months of disclosure to DARPA. However, in any case where publication, sale, or public use has initiated the one (1)-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by DARPA to a date that is no more than sixty (60) calendar days prior to the end of the statutory period.

3. ABC shall file its initial patent application on a subject invention to which it elects to retain title within one (1) year after election of title or, if earlier, prior to the end of the statutory period wherein valid patent protection can be obtained in the United States after a publication, or sale, or public use. ABC may elect to file patent applications in additional countries (including the European Patent Office and the Patent Cooperation Treaty) within either ten (10) months of the corresponding initial patent application or six (6) months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications, where such filing has been prohibited by a Secrecy Order.

4. Requests for extension of the time for disclosure election, and filing under Article VII, paragraph C, may, at the discretion of DARPA, and after considering the position of ABC, be granted.

D. Conditions When the Government May Obtain Title

Upon DARPA's written request, ABC shall convey title to any subject invention to DARPA under any of the following conditions:

1. If ABC fails to disclose or elects not to retain title to the subject invention within the times specified in paragraph C of this Article; provided, that DARPA may only request title within sixty (60) calendar days after learning of the failure of ABC to disclose or elect within the specified times.

2. In those countries in which ABC fails to file patent applications within the times specified in paragraph C of this Article; provided, that if ABC has filed a patent application in a country after the times specified in paragraph C of this Article, but prior to its receipt of the written request by DARPA, ABC shall continue to retain title in that country; or

3. In any country in which ABC decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceedings on, a patent on a subject invention.

E. Minimum Rights to ABC and Protection of ABC's Right to File

1. ABC shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title, except if ABC fails to disclose the invention within the times specified in paragraph C of this Article. The ABC license extends to the domestic (including Canada) subsidiaries and affiliates, if any, within the corporate structure of which ABC is a party and includes the right to grant licenses of the same scope to the extent that ABC was legally obligated to do so at the time the Agreement was awarded. The license is transferable only with the approval of DARPA, except when transferred to the successor of that part of the business to which the invention pertains. DARPA approval for license transfer shall not be unreasonably withheld.

2. The ABC domestic license may be revoked or modified by DARPA to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted consistent with appropriate provisions at 37 CFR Part 404. This license shall not be revoked in that field of use or the geographical areas in which ABC has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DARPA to the extent ABC, its licensees, or the subsidiaries or affiliates have failed to achieve practical application in that foreign country.

3. Before revocation or modification of the license, DARPA shall furnish ABC a written notice of its intention to revoke or modify the license, and ABC shall be allowed thirty (30) calendar days (or such other time as may be authorized for good cause shown) after the notice to show cause why the license should not be revoked or modified.

F. Action to Protect the Government's Interest

1. ABC agrees to execute or to have executed and promptly deliver to DARPA all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which ABC elects to retain title, and (ii) convey title to DARPA when requested under paragraph D of this Article and to enable the Government to obtain patent protection throughout the world in that subject invention.

2. ABC agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by ABC each subject invention made under this Agreement in order that ABC can comply with the disclosure provisions of paragraph C of this Article. ABC shall instruct employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U. S. or foreign statutory bars.

3. ABC shall notify DARPA of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceedings on a patent, in any country, not less than thirty (30) calendar days before the expiration of the response period required by the relevant patent office.

4. ABC shall include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under Agreement No. MDA972-9\*-3-00\*\* awarded by DARPA. The Government has certain rights in the invention."

G. Lower Tier Agreements

ABC shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

H. Reporting on Utilization of Subject Inventions

ABC agrees to submit, during the term of the Agreement, an annual report on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by ABC or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by ABC, and such other data and information as the agency may reasonably specify. ABC also agrees to provide additional reports as may be requested by DARPA in connection with any march-in proceedings undertaken by DARPA in accordance with paragraph J of this Article. Consistent with 35 U.S.C. § 202(c)(5), DARPA agrees it shall not disclose such agreements Officer and made part of this Agreement.

I. Preference for DARPA and Industry

Notwithstanding any other provision of this clause, ABC agrees that it shall not grant to any person the exclusive right to use or sell any subject invention in the United States or Canada unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention shall be manufactured substantially in the United States or Canada. However, in individual cases, the requirements for such an agreement may be waived by DARPA upon a showing by ABC that reasonable

but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible.

#### J. March-in Rights

ABC agrees that, with respect to any subject invention in which it has retained title, DARPA has the right to require ABC, an assignee, or exclusive licensee of a subject invention to grant a non-exclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if ABC, assignee, or exclusive licensee refuses such a request, DARPA has the right to grant such a license itself if DARPA determines that:

1. Such action is necessary because ABC or assignee has not taken effective steps, consistent with the intent of this Agreement, to achieve practical application of the subject invention;
2. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by ABC, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use and such requirements are not reasonably satisfied by ABC, assignee, or licensees; or
4. Such action is necessary because the agreement required by paragraph (I) of this Article has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such Agreement.

### **ARTICLE VIII: DATA RIGHTS (NOTE: THIS ARTICLE MAY BE SUBSTANTIALLY REVISED DEPENDING ON THE FACTS OF EACH AGREEMENT.)**

#### A. Definitions

“Data”, as used in this article, means recorded information, regardless of form or method of recording, which includes but is not limited to, technical data, software, trade secrets, and mask works. The term does not include financial, administrative, cost, pricing or management information and does not include subject inventions included under Article VII.

#### B. Allocation of Principal Rights

It is the Government’s intent to allow for innovation in processing, handling and ownership of data in the Airborne Communications Node Program. In furtherance of this principle, the government does not intend to acquire any rights in data during Phase I of this agreement. Data developed under this agreement during Phase I will be used solely to evaluate the efficacy and desirability of the technologies proposed for further development in a possible Phase II agreement.

The Government does not intend to acquire any rights in data developed outside of this agreement, for use in performance of work under Phase I of this agreement as may specifically be provided for in the Contracts under which that data was developed.

In Phase II of the ACN Program, the government intends to acquire all data rights necessary for operation, maintenance, and system support of the ACN Demonstration System. As part of its Phase I proposal, the contractor will be required to propose a definition for “operation, maintenance and system support.” If the Contractor is selected for a Phase II agreement, the Contractor agrees to negotiate rights to data prior to that Phase II award, including data that may have been developed, in full or part, during the Phase I agreement, which is consistent with the Government’s Phase II data requirements and with the principles stated in this Article.

C. Lower Tier Agreements

The Consortium shall include this Article, suitably modified to identify the Parties, in all subcontracts or lower tier Agreements, regardless of tier.

**ARTICLE IX: FOREIGN ACCESS TO TECHNOLOGY**

This Article shall remain in effect during the term of the Agreement and for five (5) years thereafter.

A. Definition

1. “Foreign Firm or Institution” means a firm or institution organized or existing under the laws of a country other than the United States, its territories, or possessions. The term includes, for purposes of this Agreement, any agency or instrumentality of a foreign government; and firms, institutions or business organizations which are owned or substantially controlled by foreign governments, firms, institutions, or individuals.

2. “Know-How” means all information including, but not limited to discoveries, formulas, materials, inventions, processes, ideas, approaches, concepts, techniques, methods, software, programs, documentation, procedures, firmware, hardware, technical data, specifications, devices, apparatus and machines.

3. “Technology” means discoveries, innovations, Know-How and inventions, whether patentable or not, including computer software, recognized under U.S. law as intellectual creations to which rights of ownership accrue, including, but not limited to, patents, trade secrets, maskworks, and copyrights developed under this Agreement.

B. General

The Parties agree that research findings and technology developments arising under this Agreement may constitute a significant enhancement to the national defense, and to the economic vitality of the United States. Accordingly, access to important technology developments under this Agreement by Foreign Firms or Institutions must be carefully controlled. The controls contemplated in this Article are in addition to, and are not intended to change or supersede, the provisions of the International Traffic in Arms Regulation (22 CFR pt. 121 et seq.), the DoD Industrial Security Regulation (DoD 5220.22-R) and the Department of Commerce Export Regulation (15 CFR pt. 770 et seq.)

C. Restrictions on Sale or Transfer of Technology to Foreign Firms or Institutions

1. In order to promote the national security interests of the United States and to effectuate the policies that underlie the regulations cited above, the procedures stated in subparagraphs C.2, C.3, and C.4 below shall apply to any transfer of Technology. For purposes of this paragraph, a transfer includes a sale of the company, and sales or licensing of Technology. Transfers do not include:

- (a) sales of products or components, or
  - (b) licenses of software or documentation related to sales of products or components, or
  - (c) transfer to foreign subsidiaries of ABC for purposes related to this Agreement,
- or

(d) transfer which provides access to Technology to a Foreign Firm or Institution which is an approved source of supply or source for the conduct of research under this Agreement provided that such transfer shall be limited to that necessary to allow the firm or institution to perform its approved role under this Agreement.

2. ABC shall provide timely notice to DARPA of any proposed transfers from ABC of Technology developed under this Agreement to Foreign Firms or Institutions. If DARPA determines that the transfer may have adverse consequences to the national security interests of the United States, ABC, its vendors, and DARPA shall jointly endeavor to find alternatives to the proposed transfer which obviate or mitigate potential adverse consequences of the transfer but which provide substantially equivalent benefits to ABC.

3. In any event, ABC shall provide written notice to the DARPA Program Manager and Agreements Officer of any proposed transfer to a foreign firm or institution at least sixty (60) calendar days prior to the proposed date of transfer. Such notice shall cite this Article and shall state specifically what is to be transferred and the general terms of the transfer. Within thirty (30) calendar days of receipt of ABC's written notification, the DARPA Agreements Officer shall advise ABC whether it consents to the proposed transfer. In cases where DARPA does not concur or sixty (60) calendar days after receipt and DARPA provides no decision, ABC may utilize the procedures under Article VI, Disputes. No transfer shall take place until a decision is rendered.

4. In the event a transfer of Technology to Foreign Firms or Institutions which is NOT approved by DARPA takes place, ABC shall (a) refund to DARPA funds paid for the development of the Technology and (b) the Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on behalf of the United States the Technology throughout the world for Government and any and all other purposes, particularly to effectuate the intent of this Agreement. Upon request of the Government ABC shall provide written confirmation of such licenses.

#### D. Lower Tier Agreements

ABC shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier agreements, regardless of tier, for experimental, developmental, or research work.

#### **ARTICLE X: GOVERNMENT FURNISHED PROPERTY, INFORMATION FACILITIES AND SERVICES**

The Government Property, facilities and services shall be provided upon the written approval of the cognizant Agreement Officer:

(Offeror will list all desired GFE, GFP, GFI, GFF, and GFS.)

#### **ARTICLE XI: CIVIL RIGHTS ACT**

This Agreement is subject to the compliance requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000-d) relating to nondiscrimination in Federally assisted programs. ABC has signed an Assurance of Compliance with the nondiscriminatory provisions of the Act.

#### **ARTICLE XII: EXECUTION**

This Agreement constitutes the entire agreement of the Parties and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions among the Parties, whether oral or written, with respect to the subject matter hereof. This Agreement may be revised only by written consent of ABC and the DARPA Agreements Officer. This Agreement, or modifications thereto, may be executed in counterparts each of which shall be deemed as original, but all of which taken together shall constitute one and the same instrument.

#### **ARTICLE XIII: SECURITY**

This program shall be provided protection as required by the appropriate security requirements required by the DD Form 254 (to be provided by contractor with proposed Agreement and approved by DARPA). The highest level of classification involved in the performance of this agreement is \_\_\_\_\_. It is the government's position that the highest security classification of any item deliverable as a result of this agreement is SECRET. This contractual document is unclassified.

#### **ARTICLE XIV: OPTIONS**

The contractor will be requested towards the end of Phase I to provided to the government a proposal for the Phase 2 effort.

ATTACHMENT 1  
STATEMENT OF WORK

(Initial Program Plan)



ATTACHMENT 2  
REPORT REQUIREMENTS

A. QUARTERLY REPORT

On or before ninety (90) calendar days after the effective date of the Agreement and quarterly thereafter throughout the term of the Agreement, ABC shall submit or otherwise provide a quarterly report. Two (2) copies shall be submitted or otherwise provided to the government Program Manager, one (1) copy shall be submitted or otherwise provided to the government Agreements Officer and one (1) copy shall be submitted or otherwise provided to government (INSERT PROGRAM OFFICE), Attn: Assistant Director for Program Management. The report will have two (2) major sections.

1. Technical Status Report. The technical status report will detail technical progress to date and report on all problems, technical issues, major developments, and the status of external collaborations during the reporting period.

2. Business Status Report. The business status report shall provide summarized details of the resource status of this Agreement, including the status of ABC contributions. This report will include a quarterly accounting of current expenditures as outlined in the Annual Program Plan. Any major deviations shall be explained along with discussions of the adjustment actions proposed. The report will also include an accounting of interest earned on Government funds, IF ANY. ABC is reminded that interest is not expected to accrue under this Agreement. In the event that interest does accrue on Government funds, ABC is required to provide an explanation for the interest accrued in the business report. Depending on the circumstances, the Payable Milestones may require adjustment. In any event, the Government reserves the right to require interest amounts earned in excess of \$250 per year to be remitted at periodic intervals to be agreed upon by both Parties. All such interest rebates shall be made payable to the United States Treasury.

B. ANNUAL PROGRAM PLAN DOCUMENT

ABC shall submit or otherwise provide to the government Program Manager one (1) copy of a report which describes the Annual Program Plan as described in Article III, Section B. This document shall be submitted not later than thirty (30) calendar days following the Annual Site Review as described in Article III, Section B.

C. SPECIAL TECHNICAL REPORTS

As agreed to by ABC and the government Program Manager, ABC shall submit or otherwise provide to the government Program Manager one (1) copy of special reports on significant events such as significant target accomplishments by ABC, significant tests, experiments, or symposia.

D. PAYABLE MILESTONES REPORTS

ABC shall submit or otherwise provide to the government Program Manager, documentation describing the extent of accomplishment of Payable Milestones. This information shall be as required by Article V, paragraph B and shall be sufficient for the government Program Manager to reasonably verify the accomplishment of the milestone of the event in accordance with the Statement of Work.

E. FINAL REPORT (NOTE: The Final Report is the last Payable Milestone for the completed Agreement)

1. ABC shall submit or otherwise provide a Final Report making full disclosure of all major developments by ABC upon completion of the Agreement or within sixty (60) calendar days of termination of this Agreement. With the approval of the government Program Manager, reprints of published articles may be attached to the Final Report. Two (2) copies shall be submitted or otherwise provided to the government Program Manager and one (1) copy shall be submitted or otherwise provided to government/ (INSERT PROGRAM OFFICE), Attn: Assistant Director for Program Management. One (1) copy shall be submitted to the Defense Technical Information Center (DTIC) addressed to Bldg. 5/Cameron Station, Alexandria, VA 22314.

2. The Final Report shall be marked with a distribution statement to denote the extent of its availability for distribution, release, and disclosure without additional approvals or authorizations. The Final Report shall be marked on the front page in a conspicuous place with the following marking:

“DISTRIBUTION STATEMENT B. Distribution authorized to U.S. Government agencies only to protect information not owned by the U.S. Government and protected by a contractor’s “limited rights” statement, or received with the understanding that it not be routinely transmitted outside the U.S. Government. Other requests for this document shall be referred to government/Technical Information Officer.”

ATTACHMENT 3  
SCHEDULE OF PAYMENTS AND PAYABLE MILESTONES

TASK	MONTH	PAYABLE MILESTONES	DARPA	(if cost sharing)
				ABC
PAYMENT			PAYMENT	

1

ATTACHMENT 4  
FUNDING SCHEDULE

PROJECTED PROGRAM FUNDING COMMITMENTS

	SERVICE Funding	ABC Contribution (if cost sharing)
FY 9*	\$	\$
FY 9*	\$	\$
FY 9*	\$	\$
TOTALS	\$	\$